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c 208 Hospital Labour Disputes Arbitration Act

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CHAPTER 208

The Hospital Labour Disputes Arbitration Act

1.—(1) In this Act,Interpre-
tation

- (a) “hospital” means any hospital, sanitarium, sanatorium, nursing home or other institution operated for the observation, care or treatment of persons afflicted with or suffering from any physical or mental illness, disease or injury or for the observation, care or treatment of convalescent or chronically ill persons, whether or not it is granted aid out of moneys appropriated by the Legislature and whether or not it is operated for private gain, and includes a home for the aged;
- (b) “hospital employee” means a person employed in the operation of a hospital;
- (c) “Minister” means the Minister of Labour;
- (d) “party” means the trade union that is the bargaining agent for a bargaining unit of hospital employees, on the one hand, or the employers of such employees, on the other hand, and “parties” means the two of them. 1965, c. 48, s. 1 (1); 1968-69, c. 49, s. 1 (1).

(2) Unless the contrary intention appears, expressions used in this Act have the same meaning as in *The Labour Relations Act*. 1965, c. 48, s. 1 (2). Idem
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(3) A central laundry or a central heating plant or a central power plant that is operated exclusively for more than one hospital shall be deemed to be a hospital for the purposes of this Act. 1968-69, c. 49, s. 1 (2). Laundries,
heating
plants and
power
plants

2.—(1) This Act applies to any hospital employees to whom *The Labour Relations Act* applies, to the trade unions and councils of trade unions that act or purport to act for or on behalf of any such employees, and to the employers of such employees. Application
of Act

(2) Except as modified by this Act, *The Labour Relations Act* applies to any hospital employees to whom this Act applies, to the trade unions and councils of trade unions that act or purport to act for or on behalf of any such employees, and to the employers of such employees. 1965, c. 48, s. 2 (1, 2). Application
of
R.S.O. 1970,
c. 232

When bargaining must resume under this Act

3. Where the Minister has informed each of the parties under clause *b* of section 18 of *The Labour Relations Act* that he does not consider it advisable to appoint a conciliation board, or where the report of a conciliation board appointed under clause *a* of that section or of a mediator appointed under section 16 of that Act has been released by the Minister to each of the parties under subsection 5 of section 31 of that Act, and in either case a collective agreement has not been made, the parties shall meet forthwith and bargain in good faith and make every reasonable effort to make a collective agreement. 1965, c. 48, s. 3.

Arbitration

4.—(1) Subject to subsection 2, if the parties have not made a collective agreement within seven days after the day on which the Minister informed the parties or released the report as mentioned in section 3, the matters in dispute between them shall be decided by arbitration in accordance with this Act. 1965, c. 48, s. 4 (1); 1968-69, c. 49, s. 3 (1).

Extension of 7-day period

(2) The parties by agreement in writing may extend the period of seven days mentioned in subsection 1 for one or more further periods of time, not exceeding a total of thirty days, and thereafter any further extension may be made only with the consent of the Minister. 1965, c. 48, s. 4 (2); 1968-69, c. 49, s. 3 (2).

Appointment of board of arbitration

5.—(1) Within seven days after the period of seven days mentioned in section 4 and any extension thereof has elapsed, each of the parties shall appoint to a board of arbitration a member who has indicated his willingness to act. 1965, c. 48, s. 5 (1); 1968-69, c. 49, s. 4.

Third member

(2) Within ten days after the day on which the second of the members was appointed, the two members appointed by the parties shall appoint a third member who has indicated his willingness to act, and such third member shall be the chairman.

Failure of party to appoint third member

(3) Where a party fails to appoint a member of a board of arbitration within the period of seven days mentioned in subsection 1, the Minister, upon the written request of either of the parties, shall appoint such member.

Failure of members to appoint third member

(4) Where the two members appointed by or on behalf of the parties fail within ten days after the appointment of the second of them to agree upon the third member, the Minister shall, upon notice in writing of such failure given to him by either of them or by either of the parties, appoint a third member.

Notice of appointment by party

(5) As soon as one of the parties appoints a member to a board of arbitration, it shall notify the other party and the Minister of the name and address of the member appointed.

(6) When the three members have been appointed to a board of arbitration, it shall be presumed conclusively that it has been established in accordance with this Act, and no order shall be made or process entered or proceedings taken in any court, whether by way of injunction, declaratory judgment, *certiorari*, *mandamus*, prohibition, *quo warranto* or otherwise, to question the establishment of the board or the appointment of any of its members, or to review, prohibit or restrain any of its proceedings.

Privative clause

(7) If a person ceases to be a member of a board of arbitration by reason of his resignation, death or otherwise before it has completed its work, the Minister shall appoint a member in his place after consulting the party whose point of view was represented by such person.

Vacancies

(8) If, in the opinion of the Minister, a member of a board of arbitration has failed to enter on or to carry on his duties so as to enable it to render a decision within a reasonable time after its establishment, the Minister may appoint a member in his place after consulting the party whose point of view was represented by such person.

Replacement of member

(9) If the chairman of a board of arbitration is unable to enter on or to carry on his duties so as to enable it to render a decision within a reasonable time after its establishment, the Minister may appoint a person to act as chairman in his place.

Replacement of chairman

(10) No person shall be appointed a member of a board of arbitration under this Act who was a member of a conciliation board that dealt with the matters to be decided by arbitration in accordance with this Act.

Certain persons prohibited as members

(11) No person shall be appointed a member of a board of arbitration under this Act who has any pecuniary interest in the matters coming before it or who is acting or has, within a period of six months preceding the date of his appointment, acted as solicitor, counsel or agent of either of the parties.

Idem

(12) Where a board of arbitration has been established and either of the parties complains to the Minister that the board has failed to render a decision within a reasonable time, the Minister may, after consulting the parties and the board, issue whatever order he considers necessary in the circumstances to ensure that a decision will be rendered without delay.

Order to expedite proceedings

(13) A board of arbitration shall determine its own procedure but shall give full opportunity to the parties to present their evidence and make their submissions.

Procedure

(14) If the members of a board of arbitration are unable to agree among themselves on matters of procedure or as to the admissibility of evidence, the decision of the chairman governs.

Idem

- Decision (15) The decision of a majority of the members of a board of arbitration is the decision of the board, but, if there is no majority, the decision of the chairman is the decision of the board.
- Powers (16) The chairman and the other members of a board of arbitration established under this Act have, respectively, all the powers of a chairman and the members of a board of arbitration under *The Labour Relations Act*. 1965, c. 48, s. 5 (2-16).
- R.S.O. 1970, c. 232
- Duty of board **6.**—(1) The board of arbitration shall examine into and decide on matters that are in dispute and any other matters that appear to the board necessary to be decided in order to conclude a collective agreement between the parties, but the board shall not decide any matters that come within the jurisdiction of the Ontario Labour Relations Board.
- Board to remain seized of matters (2) The board of arbitration shall remain seized of and may deal with all matters in dispute between the parties until a collective agreement is in effect between the parties.
- R.S.O. 1970, c. 25 not to apply (3) *The Arbitrations Act* does not apply to arbitrations under this Act. 1965, c. 48, s. 6.
- Where agreement reached **7.**—(1) Where, during the bargaining under this Act or during the proceedings before the board of arbitration, the parties agree on all the matters to be included in a collective agreement, they shall put them in writing and shall execute the document, and thereupon it constitutes a collective agreement under *The Labour Relations Act*.
- Where there is failure to make agreement (2) If the parties fail to put in writing the terms agreed upon by them, or if either of them fails to execute the document within seven days after it was executed by the other of them, they shall be deemed not to have made a collective agreement, and section 4 becomes applicable upon either party appointing a member of a board of arbitration and notifying the other party and the Minister of such appointment.
- Decision of arbitration board (3) Where during the bargaining under this Act or during the proceedings before the board of arbitration the parties have agreed upon some matters to be included in the collective agreement and they have so notified the board in writing, the board's decision shall be confined to the matters not agreed upon by the parties and to such other matters that appear to the board necessary to be decided to conclude a collective agreement, and, if, following the rendering of the decision, the parties fail to agree on the terms of a collective agreement within ten days after the release of the decision or within such longer period as may be agreed upon by the parties, the board shall prepare a document giving effect to the agreement of the parties and its decision and shall submit the document to the parties for execution.

(4) Where the parties have not notified the board in writing that, during the bargaining under this Act or during the proceedings before the board of arbitration, they have agreed upon some matters to be included in the collective agreement, the board shall decide all matters in dispute between the parties and such other matters that appear to the board necessary to be decided to conclude a collective agreement, and shall prepare a document giving effect to its decision and shall submit the document to the parties for execution. Idem

(5) The board of arbitration shall, in its decision, fix the time within which the parties shall execute the document. Idem

(6) If the parties or either of them fail to execute the document within such time as is fixed by the decision, the board may order that the document be in effect as though it had been executed by the parties, and the document thereupon constitutes a collective agreement under *The Labour Relations Act*, effective from the day upon which the order was made. Failure to execute agreement
R.S.O. 1970, c. 232

(7) Except where the parties agree to a longer term of operation, a collective agreement made under this Act remains in force for one year from the day the agreement was executed or ordered to be in effect under subsection 6, as the case may be. Term of agreement

(8) Notwithstanding subsection 7, the board of arbitration may provide, Idem

(a) where notice was given under section 13 of *The Labour Relations Act*, that the agreement or any of its terms shall be retroactive to such day as the board may fix but not earlier than the day upon which such notice was given; or

(b) where notice was given under section 45 of *The Labour Relations Act*, that the agreement or any of its terms shall be retroactive to such day as the board may fix but not earlier than the day upon which the previous agreement ceased to operate. 1965, c. 48, s. 7.

3.—(1) Notwithstanding anything in *The Labour Relations Act*, no hospital employees to whom this Act applies shall strike and no employer of such employees shall lock them out. Strikes and lock-outs prohibited

(2) Nothing in this section prohibits any suspension or discontinuation for cause of the operations of a hospital or the quitting of employment for cause if the suspension, discontinuation or quitting does not constitute a lock-out or strike. Saving

(3) Sections 65, 66, 82 and 83 of *The Labour Relations Act* apply *mutatis mutandis* to a strike of hospital employees to whom this Act applies or to a lock-out by their employers. 1965, c. 48, s. 8. Unlawful strike or lock-out

Timeliness
of repre-
sentation
applications
R.S.O. 1970,
c. 232

9.—(1) Notwithstanding section 53 of *The Labour Relations Act*, where a trade union that has been certified as bargaining agent for a bargaining unit of employees of a hospital has given to the employer of such employees notice under section 13 of that Act and the Minister has appointed a conciliation officer or mediator, an application for a declaration that the trade union no longer represents the employees in the bargaining unit determined in the certificate may be made only in accordance with subsection 2 of section 49 of *The Labour Relations Act*.

Idem

(2) Notwithstanding section 53 of *The Labour Relations Act*, where notice has been given under section 45 of that Act by or to a trade union that is the bargaining agent for a bargaining unit of employees of a hospital to or by the employer of such employees and the Minister has appointed a conciliation officer or mediator, an application for certification of a bargaining agent of any of the employees of the hospital in the bargaining unit defined in the collective agreement or an application for a declaration that the trade union that was a party to the collective agreement no longer represents the employees in the bargaining unit defined in the agreement shall not be made after the day upon which the agreement ceased to operate or the day upon which the Minister appointed a conciliation officer or mediator, whichever is later, except in accordance with section 5 or subsection 2 of section 49 of *The Labour Relations Act*, as the case may be. 1965, c. 48, s. 9.

Working
conditions
may not be
altered

10. Notwithstanding subsection 1 of section 70 of *The Labour Relations Act*, where notice has been given under section 13 or 45 of that Act by or to a trade union that is the bargaining agent for a bargaining unit of hospital employees to which this Act applies to or by the employer of such employees and no collective agreement is in operation, no such employer shall, except with the consent of the trade union, alter the rates of wages or any other term or condition of employment or any right, privilege or duty of the employer, the trade union or the employees, and no such trade union shall, except with the consent of the employer, alter any term or condition of employment or any right, privilege or duty of the employer, the trade union or the employees, until the right of the trade union to represent the employees has been terminated. 1965, c. 48, s. 10.

Offences

11. Except where inconsistent with this Act, sections 85, 86, 87, 88 and 90 of *The Labour Relations Act*, as amended or re-enacted from time to time, apply *mutatis mutandis* under this Act as if such sections were enacted in and form part of this Act. 1965, c. 48, s. 11.

Expenses

12. The expenses incurred in the administration of this Act shall be paid out of such moneys as are appropriated therefor by the Legislature. 1965, c. 48, s. 12.

13. The Lieutenant Governor in Council may make regula- Regulations
tions,

- (a) providing for and regulating the engagement of experts, investigators and other assistants by boards of arbitration;
 - (b) providing for and fixing the remuneration and expenses of chairmen and other members of boards of arbitration;
 - (c) prescribing rules of practice and procedure;
 - (d) prescribing forms and providing for their use;
 - (e) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1965, c. 48, s. 13.
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